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DECISION FROM DISCIPLINARY REPORTS AND DECISIONS SEARCH

Filed August 11, 2014

In re Monica E. Ribbeck
Respondent-Appellant

Commission No. 2011PR00120

Synopsis of Review Board Report and Recommendation (August 2014)

The Administrator charged Respondent with misconduct arising out of her representation of an individual who was injured in a Turkish Airlines airplane crash. After a hearing, the Hearing Board concluded that the Administrator had failed to prove that Respondent improperly solicited the client, but a majority of the Hearing Board concluded that Respondent failed to withdraw from representing the client after being discharged in violation of Rule 1.16. A majority of the Hearing Board recommended that Respondent be censured.

Upon review, Respondent alleged that the Hearing Board's findings that she violated Rule 1.16 were against the manifest weight of the evidence and asked that the charges against her be dismissed. The Review Board concluded that the evidence supported the Hearing Board's findings that Respondent failed to withdraw after being discharged by the client. The Review Board also concluded that Respondent's violation of Rule 1.16 warranted a recommendation of a censure.

BEFORE THE REVIEW BOARD OF THE ILLINOIS ATTORNEY REGISTRATION AND DISCIPLINARY COMMISSION

In the Matter of:

MONICA E. RIBBECK,

Respondent-Appellant,

No. 6225920.

Commission No. 2011PR0012

REPORT AND RECOMMENDATION OF THE REVIEW BOARD

The only issue before this Board on review is whether the Respondent, a lawyer concentrating her practice in aviation law, violated Rule 1.16 by failing to timely withdraw from her representation of a client who had been seriously injured in a plane crash in February 2009. The Hearing Board found that Respondent violated the rule and recommended that she be censured. Respondent appeals from that finding, contending that the Hearing Board's finding was against the manifest weight of the evidence. For the reasons set forth below, we conclude the Hearing Board's finding was not against the manifest weight of the evidence, and we also recommend that Respondent be censured.

FACTUAL BACKGROUND

Respondent was licensed in Illinois in 1994; she is also licensed in England and Wales. She initially concentrated her practice in workers compensation and also worked for an insurance company. In 2004, she formed a law firm with her brother. The law firm concentrates its practice in aviation law.

The facts surrounding Respondent's conduct that gives rise to the charges in this matter are fully set forth in the Hearing Board's Report. Respondent sought to represent Mustafa

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Gumus ("Gumus"), who had been injured in a plane crash in February 2009 in the Netherlands. Gumus is a Turkish citizen who lived in the Netherlands at the time of the crash. Gumus does not speak English; he speaks Kurdish, Turkish and some Dutch. He has a limited education.

As a result of the crash, Gumus underwent back surgery and was hospitalized for several weeks. Following his release from the hospital, he went to his ex-wife's home in Rotterdam to recuperate. The first evening he arrived at his ex-wife's home, he suffered a heart attack. Sometime after the plane crash but prior to April 19, 2009, he retained a Netherlands law firm called SAP Advocaten ("SAP") to represent him in all claims relating to the crash.

Soon after the crash, Respondent sent representatives to the Netherlands to meet with victims of the crash. Surreya Yigitbasi ("Yigitbasi"), a lawyer in Turkey, worked for Respondent on an hourly basis. He referred clients to Respondent's firm and assisted Respondent with matters relating to the crash. Yigitbasi testified at the hearing in this matter that he received a phone call in April 2009 from Ali Atak ("Atak"), who identified himself as Gumus' uncle. Yigitbasi gave Gumus' phone number to a lawyer from Respondent's firm. On April 19, four individuals visited Gumus while he was bedridden. After a presentation lasting several hours, Gumus signed a document to retain Respondent's firm to represent him in the United States in claims against Boeing Company or any other persons or corporations that could be liable for his injuries arising out of the plane crash.

As of April 19, Gumus had already retained SAP and he had no intention of discharging SAP from representing him. He was in pain during the meeting and did not understand the purpose of the meeting. Within a day after the meeting, Gumus called SAP. He asked SAP to "certify that these are not my lawyers" and asked for assistance to prevent the four individuals from disturbing him any further. SAP lawyer Sander de Lang ("de Lang") explained

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at his evidence deposition that under Dutch law, a client may cancel any agreement within eight days after signing without incurring any costs. Mr. de Lang assisted Gumus in preparing a document entitled "Notice of Withdrawal of Attorney", withdrawing "the power of attorney for representation" by Respondent's firm. Mr. de Lang sent a letter and the Notice of Withdrawal to Respondent. Respondent admitted receiving the documents. However, Respondent believed that Gumus was simply confused as to why he had hired Respondent's firm. Respondent did not contact Gumus or de Lang after receipt of the letter and the Notice. Instead, she testified she contacted Yigitbasi, who in turn contacted Atak. Atak did not contact Gumus but told Yigitbasi in this same conversation that everything was "okay" and that Yigitbasi could continue. Yigitbasi relayed the content of the conversation with Atak to Respondent. Respondent testified she then proceeded to do work for Gumus and other victims of the crash in 2009 and early 2010.

Gumus was unaware that Respondent was still acting as his lawyer and he did not authorize Respondent to perform any services on his behalf. SAP worked during the same time period on behalf of Gumus. SAP also worked with an associate in the Kreindler & Kreindler law firm in New York named Orla Brady, and with the Chicago law firm of Powers, Roger & Smith.

On March 23, 2010, Respondent filed a lawsuit in the Circuit Court of Cook County on behalf of Gumus and others against Boeing. She did not communicate with Gumus prior to filing suit. Respondent testified she told Yigitbasi to contact Gumus to approve the filing of the complaint. Yigitbasi told Respondent that he was unable to reach Gumus but that Atak said to go ahead and file the complaint. There was no testimony that either Yigitbasi or Atak communicated with Gumus. Gumus testified he never authorized Respondent to represent him or to file a lawsuit on his behalf.

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In early May 2010, Mr. de Lang learned from Turkish Airlines that Respondent was claiming to represent Gumus. He immediately sent an e-mail to Respondent stating that Gumus had discharged Respondent and attaching the April 2009 Notice. Respondent's partner, Mervin Mateo, a New York lawyer, responded to the e-mail advising de Lang of the lawsuit and stating that it would be detrimental to Gumus to dismiss the case. Mateo asserted that Respondent would contact the client. Respondent did not contact Gumus although she claimed an associate, Ray Welcher ("Welcher"), sent Gumus a letter dated May 6, advising him of the filing of the action against Boeing. Welcher denied writing or authorizing the letter. Gumus testified he never received a letter from Respondent's office.

After a flurry of e-mails between various lawyers, Kreindler & Kreindler and Powers, Roger & Smith moved to substitute as counsel in the lawsuit. Thereafter, at Respondent's direction, Welcher contacted Orla Brady of Kreindler & Kreindler and told Brady that Respondent's firm would not oppose the motion to substitute if Brady agreed to pay Respondent's firm 50% of any fees received. Brady refused the demand. Respondent did not appear at the hearing on the motion to substitute but sent Welcher to appear for the firm. At the hearing on the motion to substitute, Brady made an oral motion for sanctions against Respondent. The Court granted the motion to substitute but denied the oral motion for sanctions, stating, "Put it in writing and I will reconsider it." There was no testimony that Brady ever requested reconsideration; she reported Respondent's conduct to the ARDC.

THE HEARING BOARD'S FINDING OF MISCONDUCT

A majority of the Hearing Board concluded that Respondent violated Rule 1.16(a)(4)(1990) and Rule 1.16(a)(3)(2010) by failing to withdraw from her representation of Mr. Gumus after she was discharged.¹ With respect to Respondent's conduct prior to January

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2010, the Hearing Board found that Respondent received the Notice signed by Gumus in April 2009. The Hearing Board further found that the notice clearly discharged Respondent, stating, "Respondent's testimony that she did not believe she was discharged is simply not supported by the evidence." The Hearing Board noted that, upon receipt of the Notice of Withdrawal, Respondent failed to contact Gumus directly and failed to communicate with de Lang. With respect to Respondent's conduct after January 2010, the Hearing Board noted that Respondent again, upon notice of her discharge, failed to contact Gumus, failed to contact any

to communicate with de Lang. With respect to Respondent's conduct after January 2010, the hearing board noted that Respondent again, upon notice of her discharge, failed to contact Gumus, failed to contact any attorney at the Kreindler law firm, and failed to withdraw. Instead, she offered a fee split, ignoring her client's best interests for her own possible financial gain. The Hearing Board recommended that Respondent be censured.

**WHETHER THE HEARING BOARD'S FINDING THAT
RESPONDENT FAILED TO WITHDRAW AFTER DISCHARGE
WAS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE**

In order for a finding to be deemed against the manifest weight of the evidence, it must be arbitrary or be unsupported by the evidence. *In re Jakubowski*, 93 CH 455 (Review Bd., May 10, 1996) at 13, *approved and confirmed*, No. M.R. 12728 (Sept. 24, 1996). The Hearing Board's finding that Respondent failed to withdraw after being discharged by Gumus is amply supported by the evidence. Respondent received the Notice of Withdrawal in April 2009. Accordingly, after receipt of the Notice, she had no reasonable basis to conclude that she was still authorized to act as attorney for Gumus. Her decision to continue representing Gumus was contrary to her client's stated wishes.

Respondent does not address the Hearing Board's findings concerning her conduct in 2009. However, at hearing Respondent contended she did not violate Rule 1.16 in 2009 because 1) the April 2009 Notice of Withdrawal allegedly did not say "withdrawal", 2) she

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believed Gumus was just confused, 3) she was justified in continuing the representation because she thought the Notice had been prepared by another lawyer and not by Gumus, and 4) she told Yigitbasi to contact Gumus and Yigitbasi told her he had talked to Atak. The Hearing Board rightly rejected all of these contentions. The Notice of Withdrawal was clearly identified as a Notice of Withdrawal. Respondent admittedly never communicated with Gumus and never attempted to contact Mr. de Lang in 2009. While de Lang may have assisted Gumus in preparing the Notice of Withdrawal, Gumus approved of the language and authorized sending it to Respondent.

With respect to Respondent's reliance on Yigitbasi, Yigitbasi testified that he contacted Atak, not Gumus. Yigitbasi spoke with Atak once. There was no evidence or testimony that anyone acting on behalf of Respondent, including Atak, ever communicated with Gumus after the one long initial meeting in April 2009. There was no evidence that Gumus ever allegedly told anyone, including Atak, that he wished for Respondent or her firm to represent him. Accordingly, Respondent had no reasonable basis to continue to believe that she had the authority to act on behalf of Gumus.

Had Respondent withdrawn in 2009 as instructed by her client, the issue of Respondent's continued conduct in 2010 would not have arisen. Instead, in 2010 Respondent filed a lawsuit on behalf of Gumus, without any communication with her client. When notified again of her prior termination, Respondent did not communicate with her client or the client's subsequent counsel. Once again, she refused to withdraw.

Respondent now contends that once she filed the lawsuit on behalf of Gumus, she was justified in resisting removal because the dismissal of the lawsuit could have prejudiced Gumus. Respondent created this conundrum. However, this conundrum does not excuse her

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conduct. Instead, it demonstrates why Respondent's misconduct could have caused harm to Gumus. Fortunately, subsequent counsel was able to substitute as counsel for Gumus, thus alleviating any issue regarding Gumus' rights. Respondent correctly notes that Rule 1.16 (d) provides that *upon termination*, a lawyer shall take steps to the extent reasonably practicable to protect the client's interests, such as returning any property of the client to the client and refunding any advance payment of fees that has not been earned. (emphasis added). However, Rule 1.16 does not suggest that Respondent's continued representation, in the absence of any communication with her client or authority from her client, is appropriate.

Similarly, Respondent contends she was justified in refusing to withdraw in 2010 because she was allegedly entitled to a fee for her services on behalf of Gumus. Respondent's contention again ignores the fact that she was discharged in 2009. Even so, Respondent's entitlement to a fee would have required an adjudication by the court, an adjudication Respondent was not prohibited from seeking even if she had followed her client's wishes and had withdrawn from representation.

Respondent also suggests that the court's refusal to sanction her in 2010 in the underlying litigation is evidence that the court found her behavior in continuing to represent Gumus to be reasonable and appropriate. We do not read the court's request that any motion for sanctions be put in writing as an adjudication that Respondent acted ethically.

THE SANCTION RECOMMENDATION

The Hearing Board concluded that Respondent's violation of Rule 1.16 warranted a recommendation of a censure. We agree. We do not believe that Respondent will repeat her misconduct. A censure recommendation adequately addresses the seriousness of Respondent's misconduct and is consistent with the sanctions imposed in similar cases. *See, e.g., In re Hierl*,

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08 CH 66, *petition for discipline on consent allowed* No. M.R. 22958 (March 16, 2009) (thirty day suspension for continuing to perform services after discharge); *In re Pasley*, 97 CH 9 (Hrg. Bd., April 3, 1998) (reprimand imposed for an isolated instance of failure to withdraw after being discharged by the client; no showing of harm).

For the reasons set forth above, we affirm the Hearing Board's findings of fact and the findings of misconduct and we recommend to the Court that Respondent, Monica Ribbeck, be censured.

Respectfully Submitted,

Johnny A. Fairman, II
Claire A. Manning
Benedict Schwarz, II

CERTIFICATION

I, Kenneth G. Jablonski, Clerk of the Attorney Registration and Disciplinary Commission of the Supreme Court of Illinois and keeper of the records, hereby certifies that the foregoing is a true copy of the Report and Recommendation of the Review Board, approved by each Panel member, entered in the above entitled cause of record filed in my office on August 11, 2014.

Kenneth G. Jablonski, Clerk of the
Attorney Registration and Disciplinary
Commission of the Supreme Court of Illinois

¹ The Administrator's Complaint only alleges that Respondent violated Rule 1.16(a)(4)(1990), not Rule 1.16(a)(3)(2010). The language of the 2010 version of the Rule is very similar to the language of the 1990 Rule. Both Rules provide that a lawyer shall withdraw if the client discharges the lawyer. The Hearing Board stated that although the Administrator did not charge the 2010 version, the Board applied it to the conduct alleged in the Complaint occurring after January 1, 2010. The Respondent is not challenging the Hearing Board's application of the 2010 Rule to her conduct.